IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

Bail Appl..No. 5858 of 2007()

[CRIME NO.46/2007 OF THIDANADU POLICE STATION]

: PETITIONER

T.P.ZAKEER, THOTTIPARAMBIL HOUSE,
ERATTUPETTA.

BY ADV. SRI.SHAJI THOMAS PORKKATTIL
SRI.T.V.VINU

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

2. SUB INSPECTOR OF POLICE, THIDANADU.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.5858 of 2007

Dated this the 1st day of October 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations in a crime registered under Section 353 I.P.C. The petitioner had allegedly obstructed the discharge of official duties by revenue officials who were engaged in the activity of detecting/preventing illicit transportation of river sand. A lorry was intercepted by the revenue officials. The driver of the lorry took the key from the officials and attempted to speed away. The officials wanted to chase the lorry and apprehend the driver. The petitioner was the driver of the lorry. The investigation is in progress. In the F.I.R, the petitioner has not been named. Subsequent investigation revealed the identity of the petitioner as the accused person and he has been brought on the array of accused. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The petitioner was not the driver of the vehicle at the relevant time. The petitioner is the

husband of the owner of the lorry, a woman. The petitioner had only helped the police to get the lorry in question. The driver was asked to surrender the lorry by the petitioner. False and fanciful allegations are raised against the petitioner. In these circumstances, the petitioner may be granted anticipatory bail, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are no circumstances whatsoever to justify the invocation of the equitable discretion under Section 438 Cr.P.C. The police have absolutely no reason to make false allegations against the petitioner. The allegations are true. Investigation has revealed the truth of the allegation. The petitioner has to be arrested and interrogated. It is not necessary at all to permit the petitioner to arm himself with an order of anticipatory bail at this stage. The petition may be dismissed and the petitioner may be directed to surrender before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I do not find any circumstances in this case which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioners must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007